

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:12-cv-169-RJC**

GREGORY LAMONT BULLARD EL,

Petitioner,

v.

**ROBERT LEWIS, Dept. of Public Safety;
SUSAN WHITE, Superintendent,
Mountain View Correctional
Institution,**

Respondents.

ORDER

THIS MATTER is before the Court on Petitioner's motion for an injunction requiring Respondent Superintendent White to ensure a \$350 filing fee is credited back to his prisoner trust account. (Doc. No. 16).


On September 21, 2012, the Court entered an Order denying and dismissing Petitioner's complaint which the Court found sounded in habeas rather than in a claim for relief filed under 42 U.S.C. 1983. (Doc. No. 10). Plaintiff filed a notice of appeal to the United States Court of Appeals for the Fourth Circuit and that appeal is still pending as April 15, 2013. Gregory Lamont Bullard El v. Lewis, et al., No. 12-7826 (4th Cir. filed Oct. 24, 2012). (Doc. No. 15).

On November 8, 2012, the Clerk of Court docketed Petitioner's motion for injunctive relief. In an Order dated October 23, 2012, the Clerk noted that Petitioner's action, while identified by him as complaint under Section 1983, was in fact, according to this Court's determination, an action for habeas relief pursuant to 28 U.S.C. § 2254. Petitioner was therefore not responsible for paying the \$350 fee for the Section 1983 complaint, rather, he was responsible to pay the \$5.00 filing fee due for a Section 2254 proceeding. (Doc. No. 14). On

November 13, 2012, the Clerk of Court noted that a certified copy of the Clerk's Order rescinding the \$350 filing was mailed to Superintendent White at Mountain View Correctional. See (Doc. Entry filed Nov. 13, 2012). On November 21, 2012, the Court entered an Order granting Petitioner's application to proceed *in forma pauperis* and thereby waived the \$5.00 filing fee. The Court finds that Petitioner's motion for an injunction should be dismissed as moot because at this time it appears the appropriate Orders have been entered and served which should resolve Petitioner's request for injunctive relief.

IT IS, THEREFORE, ORDERED that Petitioner's Motion for Injunctive Relief is **DENIED** without prejudice. (Doc. No. 16).

Signed: April 29, 2013


Robert J. Conrad, Jr.
Chief United States District Judge

